



State of Washington
Department of Revenue

Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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RETAIL SALES TAX: CONTRACT REIMBURSEMENTS

Issued June 19, 1970

Are retail sales taxes owed upon the payment of damages which reimburse a contractor for excessive construction costs incurred?

The taxpayer contended that payment of the reimbursement was not required by the contract but was made through subsequent negotiations to avoid litigation, and therefore should not be subject to the retail sales tax.

The department held that the damage payment was actually an itemized construction cost which was incurred in addition to those originally contemplated by the contracting parties. This finding was based on the fact that change orders were authorized by the contract. Therefore, such orders are an inherent part of the contract and there is no significance in the fact that the reimbursement was the result of subsequent negotiation to avoid litigation.

The reimbursement falls squarely within the definition of a retail sale, RCW 82.04.050, as an amount derived from the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers.

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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